

**COUNTY OF YORK**

**EROSION AND SEDIMENT CONTROL  
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between

\_\_\_\_\_

(give full legal name or names, state of incorporation if incorporated, type of partnership if a partnership, or marital status if individual) hereinafter referred to as the "Developer", and the COUNTY OF YORK, Virginia, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "County".

**W I T N E S S E T H:**

WHEREAS, the Developer is the owner/developer (indicate which) of a certain parcel of land located in the County bearing Assessor's Parcel Number(s) \_\_\_\_\_, hereinafter referred to as the "Property"; and

WHEREAS, the Property is being developed by the Developer into a project known and designated as \_\_\_\_\_, and has had prepared a site plan for the said development dated \_\_\_\_\_, 19\_\_\_\_, prepared by \_\_\_\_\_ which plans (hereinafter called the "Plans") have been approved by the County, are on file in its Department of Environmental and Development Services, and are incorporated herein by reference; and

WHEREAS, the County desires to ensure the proper and timely installation, maintenance and adequate performance of the erosion and sediment control measures shown on the Plans, hereinafter collectively referred to as the "Control Measures"; and

WHEREAS, the Developer has submitted herewith to the County a letter of credit, cash, or certified check (circle which) in the amount of \$\_\_\_\_\_, (hereinafter called the "Surety") securing the installation, maintenance and adequate performance of the Control Measures;

NOW, THEREFORE, for and in consideration of the foregoing premises and the covenants and agreements herein contained, and in further consideration of the approval of the Plans by the County and the issuance by the County of a permit for the work proposed to be undertaken by the Developer, the parties hereto agree as follows:

1. The County agrees that, upon proper execution of this Agreement by the Developer and the submission to the County of the Surety it will issue a permit for the work described in the Plans proposed to be undertaken by the Developer.

2. The Developer agrees that it will, without cost to the County, on or before the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, construct, complete and maintain the Control Measures, or cause them to be constructed and completed, to the satisfaction of and to the standards and specifications of the County and all other government agencies and authorities having jurisdiction over the Control Measures, including, but without limitation, the Virginia Department of Transportation. Maintenance shall specifically be deemed to include the prevention of off-site sedimentation coming from the Property in such a quantity as to affect adversely downstream drainage or any public property or way.

3. The Developer has submitted herewith to the County Surety in the aforesaid amount. If the Surety is a letter of credit, it shall be in the form attached hereto as Exhibit A, be completed in conformance with the instructions attached thereto, be approved by the County Attorney as to form, content and issuing institution, be acceptable as to amount, effective period,

and otherwise to the County Administrator, in order to secure timely completion, repair and maintenance of the Control Measures and performance of the terms and conditions of this Agreement. Letters of credit shall be in effect for a minimum period of sixty (60) days beyond the date for completion of the Control Measures specified in Paragraph 2 above. The County may enter upon the Property to complete, repair or maintain the Control Measures and may draw on the Surety in the following events:

- a. The Developer fails to complete the Control Measures by the dates specified in the Plans and paragraph 2 above.
- b. The Developer fails to complete by the date specified in the Plans or paragraph 2 above the Control Measures to the satisfaction of and to the standards and specifications of the County and all other governmental agencies or authorities having jurisdiction over the Control Measures, including but without limitation, the Virginia Department of Transportation.
- c. The Developer fails to commence construction of the Control Measures in conformance with the requirements specified in the Plans.
- d. The insolvency of, appointment of a receiver for, or the filing of a voluntary or involuntary petition in bankruptcy against or by the Developer.
- e. Developer breaches any of the terms and conditions of this Agreement.

4. In the event that the County draws on the Surety, it may use such funds to complete, repair or maintain the Control Measures or cause them to be completed, repaired or maintained. The Developer shall be liable to the County for any and all costs of completing, repairing or maintaining the Control Measures which shall be in excess of the Surety. It is the purpose and intent of the parties that the amount of the Surety shall have been determined to be sufficient to

defray not only the anticipated cost of completing or having completed the Control Measures but also unanticipated cost overruns, the cost incurred by the County in drawing on the Surety, an administrative fee in the amount of \$1,000.00, or five (5) percent of the amount of the cost of completing the Control Measures, whichever sum is greater, and any and all other reasonable costs which the County has incurred or may conclude, in its sole discretion, are to be incurred. The Developer hereby acknowledges that an administrative fee in the above amount is reasonable compensation to the County for its costs in drawing on the Surety and, when necessary, causing the Control Measures to be completed, repaired or maintained.

The Developer acknowledges and agrees that the County is under no obligation to give any notice to the Developer of expiration of any letter of credit furnished hereunder or of its intent to draw down such letter of credit or on any form of Surety in any of the events specified in this Agreement.

5. The County shall, upon drawing on any funds represented by the Surety, deposit the same in an interest-bearing account to the extent not needed to cover expenditures made or reasonably anticipated to be made in the near future, but the County shall have no responsibility to deposit or maintain any of such funds in an account at the maximum interest available. Upon completion, repair or maintenance of the Control Measures, as determined by the County, and payment of all expenses incurred by the County in connection therewith, any unexpended funds, including any interest earned thereon, shall be returned to the Developer.

6. The County shall not be liable to the Developer or to any third party for the manner in which the Control Measures are completed, repaired or maintained, any delay in effecting the same, the fact that the cost of performing such work is in excess of or less than the amount made available by drawing down the funds or any part thereof represented by the Surety, or that the

County has drawn on the entire amount of said Surety even though it subsequently develops that the entire amount was not required to carry out the provisions of this Agreement.

7. The Developer acknowledges that the County is under no obligation to extend the time herein provided for completion of the Control Measures by the Developer. However, in the event that the County unilaterally agrees in writing to do so, such writing shall, without more and without formal execution of any other agreement by the parties, constitute such an extension, and all of the terms of this Agreement shall continue in effect for the duration of such extension insofar as they are not inconsistent with the terms of the extension; provided, however, that no extension shall be effective until or unless the Developer furnishes to the County a new or amended Surety conforming to the requirements of paragraph 3 above. The County may require that the amount of the Surety be increased if an extension is permitted.

8. It is mutually understood and agreed that if the Developer shall faithfully execute all requirements of this Agreement and all relevant laws and regulations, and shall indemnify, protect and save the County, its officers, agents and employees harmless from all loss, damage, expense or cost by reason of any claim made or suit or action instituted against the County, its officers, agents or employees on account of or in consequence of any breach on the part of the Developer, all of which the Developer hereby covenants to do, then the Surety shall be released by the County to the Developer; provided, however, that release of the Surety shall not in any way or to any extent release, diminish or otherwise reduce any obligation or liability of the Developer provided in this Agreement.

9. The Developer does further hereby agree to indemnify, protect and save the County, its officers, agents, and employees harmless from and against all losses and physical damages to property, and bodily injury or death to any person or persons, which may arise out of or be caused

by the construction, maintenance, presence or use of any facility shown on the Plans as to be dedicated to the County or other governmental entity until such time as the said facilities shall be accepted as a part of the County's systems, or those of its agencies, or the State System of Secondary Highways, as the case may be.

10. This Agreement shall be binding upon the Developer and the Developer's successors and assigns.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals:

DEVELOPER:

\*\*\*\*\*

INDIVIDUAL OR INDIVIDUALS

\_\_\_\_\_(SEAL)

\_\_\_\_\_(SEAL)

\*\*\*\*\*

CORPORATION

Attest

By: \_\_\_\_\_(SEAL)

President (Attach copy  
of corporate resolution  
authorizing execution)

\_\_\_\_\_  
Secretary

\*\*\*\*\*

PARTNERSHIP

By: \_\_\_\_\_(SEAL)

Partner

By: \_\_\_\_\_(SEAL)

Partner

\*\*\*\*\*

Approved as to form:

\_\_\_\_\_  
County Attorney

COUNTY OF YORK, VIRGINIA

By: \_\_\_\_\_  
Stormwater Engineer

(PUT ON BANK LETTERHEAD)

IRREVOCABLE LETTER OF CREDIT NO. (1)

\_\_\_\_\_(2)\_\_\_\_\_

County of York  
c/o Mr. Daniel M. Stuck  
County Administrator  
P. O. Box 532  
Yorktown, Virginia 23690

Re: \_\_\_\_\_(3)\_\_\_\_\_ (13) \_\_\_\_\_

Gentlemen:

We hereby establish our Irrevocable Letter of Credit No. \_\_ (1) \_\_ in your favor, for the account of \_\_\_\_\_(3)\_\_\_\_\_, available by your drafts drawn at sight on us up to the aggregate amount of \_\_\_\_\_(4)\_\_\_\_\_, each such draft accompanied by the following document:

Your written statement certifying that \_\_\_\_\_(3)\_\_\_\_\_ has defaulted in the performance of the terms and conditions of \_\_\_\_\_(5)\_\_\_\_\_ Agreement with you, dated the \_\_ (6) \_\_ day of \_\_ (6) \_\_, 19\_\_ (6) \_\_, and that you are, in consequence, entitled to the amount of the accompanying draft.

All drafts drawn under this letter of credit must be marked "Drawn under \_\_ (7) \_\_ Letter of Credit No. \_\_ (1) \_\_ dated \_\_ (2) \_\_".

This credit is valid until \_\_\_\_\_(8)\_\_\_\_\_ and drafts drawn hereunder, if accompanied by document as specified above, will be honored if presented on or before that date to \_\_\_\_\_(9)\_\_\_\_\_ at \_\_\_\_\_(10)\_\_\_\_\_ or, if said bank is not doing business at that address, then to any other address or location of said bank or its successor.

Except as otherwise expressly stated herein, this credit is subject to the "Uniform Customs and Practice for Documentary Credits", fixed by International Chamber of Commerce Publication No. 400, 1983 revision.

Very truly yours,

\_\_\_\_\_(7)\_\_\_\_\_

By: \_\_\_\_\_(11)\_\_\_\_\_

\_\_\_\_\_(12)\_\_\_\_\_



- (1) Number assigned to letter of credit by bank.
- (2) Date issued.
- (3) Name of person, corporation, or partnership submitting letter of credit.
- (4) Amount of letter of credit written in words and numerals, i.e., Fifty thousand and no/100 dollars (\$50,000.00).
- (5) Insert "his", "her", "its" or "their", as appropriate.
- (6) Date shown on agreement.
- (7) Name of bank.
- (8) Expiration date of letter of credit.
- (9) Name and address of bank.
- (10) Address of bank or branch thereof where letter of credit is to be presented. No letter of credit will be acceptable unless it may be presented at a bank office in York County or James City County or in the City of Newport News, Hampton, Williamsburg, Norfolk, Virginia Beach, Chesapeake, or Richmond.
- (11) Signature of authorized officer of bank.
- (12) Title of authorized officer of bank.
- (13) Name of project.